

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**HUMILITY OF MARY HEALTH PARTNERS/
ST. JOSEPH HEALTH CENTER**

Employer

and

Case No. 8-UC-359

**CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN
AND HELPERS UNION, LOCAL NO. 377,
A/W INTERNATIONAL BROTHERHOOD OF
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA**

Petitioner

DECISION AND ORDER CLARIFYING UNIT

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.¹

BACKGROUND

The Employer is engaged in the operation of health care facilities in northeastern Ohio, including St. Joseph's Health Center in Warren, Ohio. The parties are signatory to a collective bargaining agreement effective from February 1, 2001 through January 31,

¹ The Petitioner and the Employer filed post-hearing briefs which have been duly considered. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The Petitioner is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) of the Act.

2004. The agreement covers a nonprofessional bargaining unit at the Employer's facility in Warren, Ohio.

The single issue is whether the Employer's Procedure Planning Associates should be added to the existing unit of employees through the Petitioner's unit clarification petition. For the reasons set forth below, I find that the unit should be clarified to include the Procedure Planning Associates.²

FACTS

The collective-bargaining unit currently includes, *inter alia*, Medical Imaging Secretaries (MIS employees). MIS employees were formerly known as Medical Imaging Registration Representatives and that is the title listed in the Recognition article of the agreement. By its petition, the Petitioner seeks to clarify the existing unit to include the new position of Procedure Planning Associate (PPA employees). There is no collective bargaining history with regard to the PPA position which was created in or around October 2001. The record reveals that an overview of the medical process is as follows:

² The collective-bargaining unit consists of the following:

Included: All full-time and regular part-time nonprofessional employees employed by the Employer at its 667 Eastland, SE, Warren, Ohio facility including clerk lab assistant, receiving/dispatch clerk, cook, lab assistant, secretary I, secretary II, tech I central supply, tech II central supply, materials management associate, unit clerk, unit assistant, health care clerical associate, behavioral health service clerical associate, health care associate, tech perioperative, physical therapy aide, nutritional worker I, nutritional worker II, nutritional worker III, nutrition customer service associate, social service associate, dietary store room attendant, cafeteria worker, customer service specialist, clerk II, utility worker, transporter, transport dispatcher, triage assistant, PBX operator, PBX team leader, medical imaging registration representative, and procedure planning associate.

Excluded: All technical employees, business office clerical employees, skilled maintenance employees, registered nurses, confidential employees, managers and professional employees, guards and supervisors as defined in the Act and per diem employees.

the PPA employees have contact with the physician or patient to schedule a medical procedure and gather the appropriate information from the patient; the patient arrives at the medical facility where they meet and interact with the MIS employees; and finally, the Radiology Technicians perform the procedure on the patient.

The duties listed in a posting for the PPA position in October 2001 are similar to the duties listed in a posting for an open MIS position in August 2001. In this regard, the position description in the PPA posting states that PPA employees register and schedule patients, perform processing including coordinating with physician offices and patients, provide insurance verification and phone support for admitting functions and radiology, and coordinate both internal and external customers. The position description in the MIS posting states that MIS employees maintain records for the department and scheduling, schedule outpatient and inpatient radiology procedures “using a computer and/or manually as required,” gather pre-certifications, authorizations, verifications and relay that information to patient and offices concerning preparation and obtain information for medical necessity prior to testing. They also consult with radiologists and managers as needed to perform scheduling.

The record reveals that the Employer currently employs four MIS employees and three PPA employees (two full-time and one part-time). One of the PPA employees successfully bid on that position from her MIS position. The MIS employees are located in the Medical Imaging or Radiology department and the PPA employees are located in the basement of the Radiology department.³ The PPA employees’ basement office was previously occupied by the MIS employees. The work areas of the MIS and PPA

³ The PPA employees are the only employees located in the basement.

employees are connected by steps and a dumbwaiter. The MIS and PPA employees are supervised by Tammy Blandine, the Employer's Technical Operations Manager.

Blandine testified that the PPA employees receive phone calls from the physician offices, take patient information such as the person's name, birth date, social security number, and health care provider, and ask what procedure they are to schedule. The PPA employees then schedule the patients using a scheduling computer grid found on the "pathways" computer system. The pathway system is a new program that the PPA employees are trained to use.⁴ The record reveals that the scheduling of appointments is a job function which was previously performed by the MIS employees. In this connection, prior to the creation of the PPA position, patient procedures were scheduled in a "scheduling book" which consisted of pages of handwritten entries. The PPA employees also generate a "patient itinerary" on the computer which is printed out and given to the physician's office and/or the patient to notify them of the procedure time, which was a function previously performed verbally by the MIS employees.⁵

According to Blandine, the MIS employees work in a public reception area where they have daily contact with patients, ask criteria questions, enter patient information into the computer, and generate requisitions. They then pull the patient's file and route it to the various departments so that the patient's x-ray can be taken. The MIS employees then handle the film releases and prepare the x-rays and files for the patients to take to the

⁴ The PPA employees also have a medical necessity compliance software package called "health works" where they enter the patient's information.

⁵ The PPA employees also generate "admission reports" which were previously done by financial representative employees, who are non-bargaining unit employees. The PPA employees are also responsible for a criteria sheet used to schedule MRA procedures, which was previously the responsibility of the MRI Technologists, a non-bargaining unit position. In addition, the PPA employees schedule patients for CAT scans using the pathways computer system.

specialists. According to Blandine, PPA employees spend 95% of their time using the computer system and MIS employees spend 40% of their time on the computers.

The record reveals some interaction between the MIS and PPA employees which occurs when a doctor orders a CAT scan or MRI and those are taken down to the basement to the PPA employees. Also, at the end of the day, the PPA employees drop off daily admission reports to the employees on the first floor.

The PPA employees' rate of pay is higher than that of the MIS employees. MIS and PPA employees share the same benefits.

ANALYSIS

In cases involving clarification of bargaining units, the Board typically looks to various factors in determining whether a new group of employees should be added to an existing bargaining unit. **John P. Scripps Newspaper Corp. d/b/a the Sun, 329 NLRB 854 (1999); Great A & P Tea Co., 140 NLRB 1011 (1963).** Some factors considered by the Board in its determination are supervision, qualifications, skills, training, job functions, location, work contact, integration, interchange, and bargaining history. **Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).** The Board also looks to the role of the new employees in relationship to the operations of the existing unit. **The Sun, supra at 857; Granite City Steel Co., 137 NLRB 209 (1962).**

In applying the principles and traditional community-of-interest factors, such as supervision, job functions, location, work contact, and integration, I find that the PPA employees perform job functions substantially similar to those performed by the MIS unit employees, and they should therefore be included in the existing unit.

In this regard, the record reveals that many of the job functions performed by the PPA employees were previously performed by the MIS employees. The PPA employees schedule procedures with the use of a new computer program, while that task was previously performed by the MIS employees through handwritten entries in a scheduling book. The PPA employees also generate a patient itinerary on the computer which is provided to the physician's office and/or patient to notify them of the procedure time, previously this was done verbally by the MIS employees. The Board has held that "a showing that technological innovation has affected unit work will not suffice to exclude new classifications performing that work from the unit unless the work has changed to such an extent that the unit would no longer make sense if it included the disputed employees." **The Sun, supra at 859**. I find that the work has not changed to such an extent that the PPA employees should be excluded from the unit.

The record also reveals that the PPA and MIS employees share common supervision and their locations of work are in close proximity (in fact the PPA employees occupy the basement office where the MIS employees were previously located). In addition, the PPA employees have some contact with the MIS employees, and the work functions of the PPA employees are integrated with the functions of the MIS employees. In this regard, the Board also looks to the role of the new employees in relationship to the operations of the existing unit. **The Sun, supra at 857; Granite City Steel, supra at 209**. The record reveals that the role of the PPA employees is an integral part of the Employer's medical process which, along with the traditional community-of-interest factors mentioned above, supports their inclusion in the unit.

In resolving this issue, I also find persuasive the Board's decision in The Sun, *supra*, which addressed, *inter alia*, issues of unit clarification where the job functions of the non-unit position were virtually identical to those of the unit position. In that case, the Board stated:

If the new employees perform job functions similar to those performed by unit employees, as defined in the unit description, we will presume that the new employees should be added to the unit, unless the unit functions they perform are merely incidental to their primary work functions or are otherwise an insignificant part of their work. Once the above standard has been met, the party seeking to exclude the employees has the burden to show that the new group is sufficiently dissimilar from the unit employees so that the existing unit, including the new group, is no longer appropriate. The Sun, *supra* at 859.

In determining whether the presumption has been rebutted, the Board considers community-of-interest factors that relate to changes in the nature and structure of the work. *Id.* In this regard, the Board found that “a showing that technological innovation has affected unit work will not suffice to exclude new classifications performing that work from the unit unless the work has changed to such an extent that the unit would no longer make sense if it included the disputed employees.” *Id.* Thus, the presumption will apply if the only significant differences in the work performed “flow directly from the improved methodology and increased efficiency brought on by computer technology.” *Id.*, citing United Technologies, 287 NLRB 198, 204 (1987). The Board recognized that the burden it imposes to show sufficient dissimilarity is a substantial one, but it found it both appropriate and necessary to protect the integrity of the bargaining unit agreed to by the parties. *Id.* at 859.

As mentioned above, I find that the PPA employees perform job functions substantially similar to those performed by the MIS unit employees, and therefore they

should be included in the existing unit. Also, as mentioned above, I find that traditional community-of-interest factors support that finding. Accordingly, the evidence does not show that the PPA employees are sufficiently dissimilar from the MIS employees so that the existing unit, including the PPA employees, is no longer appropriate.

The Employer argues in its post-hearing brief that community of interest factors, such as a different work situs and different wages, support a finding that the position should be excluded. I conclude that these assertions are without merit. As mentioned above, although the PPA employees are located in the basement of the radiology department, they are in close proximity to the MIS employees, they occupy the space formerly used by the MIS employees, and they have some contact with the MIS employees. In addition, I find that the Employer's reliance on differences in pay scales for the MIS and PPA employees is misplaced. In this connection, I note that the Board has found that reliance on community-of-interest factors that are solely within the employer's control, such as wages, are not sufficient to rebut the presumption of inclusion. **The Sun, supra at 859**. Reliance on such factors would enable an employer to manipulate an exclusion of employees from the unit. **Id.**

In further support of my determination that the PPA employees should be included in the nonprofessional unit, I note that the Board has included positions similar to the PPA position in nonprofessional service and maintenance units, distinguishing those employees from business office clerical employees. In this regard, the Board in **Rhode Island Hospital, 313 NLRB 343, 357 (1993)** included physician referral representatives in a nonprofessional unit. The employees at issue in that case, like the

PPA employees in the instant case, received calls from patients, confirmed patient appointments, and entered intake information into the hospital's computer system.

Likewise, in **William W. Backus Hospital**, 220 NLRB 414, 415-416 (1975) the Board found it appropriate to place hospital clerical employees into a nonprofessional service and maintenance unit, distinguishing them from business office clerical employees. In **William W. Backus Hospital**, the Board included hospital clerical employees (including, *inter alia*, medical records employees and admitting clerks) in the unit because they shared a community-of-interest with the nonprofessional employees. In that regard the Board found that, unlike business office clerical employees, the hospital clerical employees in question worked side by side with service and maintenance employees, their work and working conditions were materially related to unit work, they had contact with unit employees, and they shared common supervision with the unit employees. The characteristics of those hospital clerical employees are similar to those of the PPA employees in the instant case. Thus, I find placement of the PPA employees in the nonprofessional unit herein is consistent with the Board's well established practice. See also **Sisters of St. Joseph of Peace**, 217 NLRB 797, 798 (1975) (medical records employees and ward clerks).

Finally, I note that accretion of the three PPA employees in this case is appropriate as the Board and courts have held that "[a]n accretion is simply the addition of a *relatively small group of employees* to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity." **Judge & Dolph, Ltd., a Division of Wirtz Corp.**, 333 NLRB No. 19,

JD slip op. at 6 (2001), quoting Lammart Industries v. NLRB, 578 F.2d 1223, 1225 fn.3 (7th Cir. 1978)(emphasis added).

Accordingly, based on the foregoing and the record as a whole, I find that the Procedure Planning Associate employees share a sufficient community of interest with the unit employees that warrants their inclusion in the existing bargaining unit. Accordingly, I shall clarify the existing unit to include them.

ORDER CLARIFYING UNIT

The collective-bargaining unit is clarified to include the Procedure Planning Associates.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by May 29, 2002.

Dated at Cleveland, Ohio this 15th day of May, 2002.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

385-7533-2040